

BOARD OF APPEALS CASE NO. 5023

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BEFORE THE

APPLICANTS: Charles & Susan Sergent

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ZONING HEARING EXAMINER

REQUEST: Variance for an in-ground swimming pool within the 75 foot Natural Resource District buffer; 1724 Edwin Drive, Bel Air

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 2/23/00 & 3/1/00

HEARING DATE: April 19, 2000

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Record: 2/25/00 & 3/3/00

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Charles and Susan Sergent, are requesting a variance from Sections 267-41(D)(5)(e) and (6) of the Code, to allow construction of an in-ground pool within the 75 foot buffer required in a Natural Resources District (NRD), in an R1 Urban Residential District.

The property is located at 1724 Edwin Drive, Bel Air, in the Third Election District. The parcel is more specifically identified as part of the Tudor Manor subdivision, Lot 48, Section 1 and as Parcel 0461, in Grid 3D, on Tax Map 41. The property contains approximately 0.8 acres and is zoned R1.

The Applicant, Ms. Susan Sergent, appeared and testified that she and her husband are requesting a variance to construct a 20 by 40 foot in-ground pool with a surrounding three (3) foot concrete walkway and fence in the backyard of their home on the subject property. The pool would be located seventeen (17) feet from an existing patio, directly behind the house. Under the Applicants' proposed site plan, approximately half of the pool, walkway and fence would be located within the required 75 foot buffer zone of a Natural Resources District.

According to Ms. Sergent, the subject property has a unique pie shape, which limits the area in which a pool can be placed. The only area of the backyard which is not located within the NRD is the right side of the backyard, closer to the neighboring property line and currently bordered by a row of pine trees. It was Ms. Sergent's testimony that, while the pool could be located outside of the buffer on the right side of the property without the need for a variance, this location would likely not be approved by the homeowner's association due to its close proximity to the property line and the disturbance of the row of pine trees which provide privacy between the neighboring property. The homeowner's association has approved location of the pool as proposed in the Applicant's request.

Case No. 5023 - Charles & Susan Sergent

It was also Ms. Sergent's testimony that placement of the pool in any other location besides directly behind the house would cause practical difficulty in that it would prevent her from being able to watch her children swim from the house. Construction of a smaller pool or a different design to reduce the intrusion into the buffer would also prove difficult in that she has already contracted with the pool company for this size pool and she would risk losing her sizeable deposit if plans were to change significantly. Ms. Sergent indicated that she did not believe there would be any negative impact to adjoining properties and she would agree to abide by those conditions recommended by the Department of Planning and Zoning if the request is approved.

The Applicant, Mr. Charles Sergent, also appeared and testified regarding the fact that the pool company has already delivered the pool, so it would not be possible for the Applicant's to change the size of the pool without significant hardship. Mr. Sergent testified that the neighbors were supportive of the Applicants' request.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified that the Department conducted an on-site investigation, which included a review of aerial photographs of the subject property and the subject Natural Resource District. According to Mr. McClune, the NRD is the result of a farm ditch which now consists of a swale lined with multi-floral growth. It was Mr. McClune's testimony that the location of the pool, walkway and fencing would not result in any adverse impact to the NRD area, particularly if the recommended landscaping is installed. In fact, Mr. McClune indicated that the proposed construction with the requisite landscaping would actually provide a better buffer for the NRD than that which currently exists. Mr. McClune concurred with the Applicant's contention that moving the pool to the right side of the property to avoid the buffer would result in the removal of existing pine trees and a decrease in the amount of privacy afforded the yards as a result of the trees. Accordingly, it is the Department's recommendation that the request for the variance be approved with the conditions as set forth in the Staff Report.

No witnesses appeared in opposition to the request.

CONCLUSION:

Case No. 5023 - Charles & Susan Sergent

The Applicants are seeking approval of a variance to Sections 267-41(D)(5)(e) and (6) to allow construction of a 20 by 40 foot in ground pool and surrounding 3 foot concrete walkway and fencing within the 75 foot Natural Resource District buffer. Under the site plan as proposed, approximately one half of the pool, walkway and fencing would be located within the buffer.

Sections 267-41(D)(5)(e) and (6) provide:

- (5) Conservation requirements. The following conservation measures are required within this district:
 - (e) Non-tidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.
- (6) Variances. The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources.

The uncontradicted evidence offered by the Applicants and the Department of Planning and Zoning demonstrates that the subject property has a unique pie shape with a significant portion of the rear yard being located with the Natural Resource District buffer zone. The Department's investigation revealed that the NRD was created as a result of a farm ditch, which now constitutes a swale and adjacent natural plant growth. It appears evident that the proposed construction of the pool will not adversely affect the NRD and that the recommended landscaping may, in fact, provide improved protection. Denial of the request would result in practical difficulty and hardship to the Applicants, in that they would effectively be prohibited from constructing a pool in a safe, private and economically feasible manner. There was no evidence to suggest that the granting of the Applicant's request would result in any negative impact to adjacent properties or any detriment to the purpose of the Code or the public interest. It should also be noted that the evidence demonstrated that the provisions of the Code requiring that advisory comments be solicited from the Soil Conservation district and the Maryland Department of the Environment have been met.

Therefore, it is the recommendation of the Hearing Examiner that the requested variance be approved subject to the following conditions:

Case No. 5023 - Charles & Susan Sergent

1. The Applicants shall submit a revised site plan for the existing permit;
2. The Applicants must obtain all necessary inspections;
3. The Applicants shall submit a landscaping plan for review and approval by the Department of Planning and Zoning;
4. Grading for construction of the pool shall be minimized as much as possible, utilizing applicable sediment controlling methods;
5. Permanent seeding mixture shall be utilized that is comparable with the existing species of vegetation within the buffer area.

Date May 23, 2000

**Valerie H. Twanmoh
Zoning Hearing Examiner**